

RAV IE

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE

FA CHUA J

[MAGISTRATE'S APPEAL NO. 35 OF 1987]

1 JULY 1987

CRIMINAL PROCEDURE: *Offence under s. 67(1) Road Traffic Act (Cap 92) [Sing]- Appellant pleaded guilty - Charge of causing death of passenger in car by driving motor car in a manner dangerous to public - Sentenced to 3 months' imprisonment and 3 years' disqualification from holding all classes of driving licence - "Shall be liable on conviction to imprisonment for a term not exceeding 5 years"- Whether imprisonment is mandatory under s. 67(1) Road Traffic Act.*

This was an appeal by the appellant against the sentence of 3 months' imprisonment and 3 years' disqualification from holding all classes of driving licence imposed by the District Court when he was convicted after he had pleaded guilty to a charge of causing the death of a passenger by driving the motor car in a manner which was dangerous to the public, an offence under s. 67(1) of the Road Traffic Act (Cap 92).

The main point raised in this appeal was whether imprisonment was mandatory under s. 67(1) as the trial Judge was of the view that s. 67(1) of the Act prescribed a mandatory sentence of up to 5 years' imprisonment and that it did not provide for a fine as punishment. The provision is that a person guilty of an offence under s. 67(1) "shall be liable on conviction to imprisonment for a term not exceeding 5 years".

Held:

The trial Judge's view that s. 67(1) of the Road Traffic Act prescribed a mandatory sentence of up to 5 years' imprisonment and that the Section did not provide for a fine as punishment, is correct. In the circumstances of this case, the sentence imposed by the trial Judge was not manifestly excessive.

[Appeal dismissed.]

Cases referred to:

PP v. Man B. Ismail [1939] MLJ 161

PP v. Hew Yew [1972] MLJ 164

Jayanathan v. PP [1973] 1 MLJ 68

Legislation referred to:

Criminal Procedure Code (FMS Cap 6), s. 294

Prevention of Crime Ordinance 1959, s. 15(4)

Road Traffic Act (Cap 92) [Sing], s. 67(1)

Vagrants and Decrepit Persons Enactment (Cap 191), s. 3(a)

For the appellant - Jeanny Ng

For the public prosecutor - David Khor

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JUDGMENT

FA Chua J:

b The appellant, Rav Ie @ Raghavan Iyengar, appeals against the sentence of three months' imprisonment and three years' disqualification from holding all classes of driving licence, imposed by the District Court when he was convicted on a charge of causing the death of a passenger in his car by driving the motor car in a manner which was dangerous to the public, an offence under s. 67(1) of the Road Traffic Act (Cap 92). The appellant had pleaded guilty to the charge.

c On 20 July 1985, the appellant drove along Tanglin Road at a fast speed and encroached on the wrong side of the road when negotiating a bend, and collided with an on-coming taxi. As a result of the collision the rear passenger in his car was killed on the spot. The certified cause of death was: Asphyxia due to aspiration of food.

The trial Judge was of the view that s. 67(1) prescribed a mandatory sentence of up to five years' imprisonment and that it did not provide for a fine as punishment.

d The main point raised in the appeal is whether imprisonment is mandatory under s. 67(1). The provision is that a person guilty of an offence under s. 67(1) "shall be liable on conviction to imprisonment for a term not exceeding 5 years."

Counsel for the appellant relied on the Malaysian case of *PP v. Man B. Ismail* [1939] MLJ 161, where the words "shall be liable" were construed by Aitken J and where he held that "shall be liable to imprisonment" in s. 3(a) of the Vagrants and Decrepit Persons Enactment (FMS Cap 191) did not render a sentence of imprisonment mandatory. He said (p. 162):

e It would also seem that the learned Magistrate, who tried this particular case, was under the impression that because the section provides that every person found guilty of an offence against it "shall be liable to imprisonment for six months", therefore he was compelled to pass some sentence of imprisonment on such a person however many mitigating circumstances might be present. If... ctd

f ... that was his impression, then in my opinion he was under an entirely wrong impression as to the meaning of the words "shall be liable to." To my mind they give the Court an absolute discretion as to whether it shall award a sentence of imprisonment or deal with the accused under and in accordance with the probationary provisions of s. 294 of the Criminal Procedure Code. If the legislature had intended that all persons convicted of an offence against this s. 3(a) of the Vagrants and Decrepit Persons Enactment should be sent to prison, whatever the circumstances may be, it would have used the expression "shall be punished with imprisonment", which is to be found so frequently in our Penal Code.

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It is to be observed that Aitken J was there dealing with the question whether the Court could deal with a person, who had been convicted of any offence punishable with imprisonment, under and in accordance with the probationary provisions of s. 294 of the Criminal Procedure Code (FMS cap 6). He was not dealing with the question of whether the Court had a discretion to impose a fine in lieu of imprisonment.

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In *PP v. Hew Yew* [1972] MLJ 164 Raja Azlan Shah J also construed the words "shall be liable" in s. 15(4) of the Prevention of Crime Ordinance 1959 of Malaysia, which reads:

A registered person who contravenes or fails to comply with any order or restriction imposed on him under this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding five years and not less than two years.

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The learned Judge reviewed certain authorities on the words “shall be liable” therein. They show that where provisions of law provide for a term of imprisonment or an amount by way of fine, the Courts have a discretion to impose a term of imprisonment or fine not exceeding the maximum prescribed. In the context of s. 15(4) of the Prevention of Crime Ordinance, from the words “shall be liable to imprisonment for a term not exceeding five years and not less than two years”, the learned Judge expressed this view (p. 16):

From that it seems to me that the Court has an absolute discretion to impose the maximum sentence of 5 years or any lesser sentence the minimum of which must not be less than two years.

In the result, he set aside the sentence of a fine imposed by the lower Court and substituted a sentence of two years’ imprisonment.

In *Jayanathan v. PP* [1973] 1 MLJ 68 the following question of law was referred to the Federal Court of Malaysia:

Whether the provision of s. 15(4) of Prevention of Crime Ordinance 1959 overrules the provision of s. 294 of the Criminal Procedure Code in so far as an offence against s. 15 of the Prevention of Crime Ordinance is committed.

In that case, the applicant had pleaded guilty to a charge of contravening a restriction order imposed on him under s. 15 of the Prevention of Crime Ordinance 1959. The learned President bound him over in the sum of \$1,000 in one surety under s. 294 of the Criminal Procedure Code. The time for appeal having lapsed, the learned DPP applied for revision of this order to the High Court on the ground that

“the learned President erred in law in imposing a sentence of binding over when s. 15(4) of the Ordinance clearly states” shall be liable to imprisonment for a term not exceeding five years and not less than two years”.

The Federal Court considered the cases of *PP v. Hew Yew* and *PP v. Man B. Ismail* and considered the provisions of s. 294 of the Criminal Procedure Code (FMS Cap 6). Ong Hock Sim FJ delivering the judgment of the Court said (p. 69):

This section (s. 294) vests the Court before which a person is convicted with power to suspend sentence for such period as the Court may direct, and, if the offender behaves himself during such period, he would escape punishment for his offence. If he fails to observe the conditions of his bond, he would be liable to be apprehended and dealt with for his original offence. As Thomson J (as he then was) said in *PP v. Idris*. ctd.

Section 294 which only applies in the case of adult offenders can only be made use of where a person has been convicted and where his conviction is for an offence punishable with imprisonment without the option of a fine.

I do not wish to lay down any hard and fast rule, which in any event would be difficult to prove, but Magistrates would be well-advised only to make use of s. 294 where an offence which is generally of a serious nature and which is punishable with imprisonment has been committed by an adult offender and where it is considered desirable to place him on probation.

The learned Judge concluded:

In our view, if the legislature intended that s. 294 is to cease to have application in respect of an offence under s. 15 of the Prevention of Crime Ordinance, it should be so expressed in the clearest possible language. We can find no such provision.

Our answer to the question, we repeat, is in the negative.

a Here again, the Federal Court was dealing not with the question whether the Court had the discretion under s. 15(4) of the Prevention of Crime Ordinance to impose a fine in lieu of imprisonment; it decided that the accused could be bound over under s. 294 of the Criminal Procedure Code.

b It seems to me that, in the present case, the trial Judge's view that s. 67(1) of the Road Traffic Act prescribed a mandatory sentence of up to five years' imprisonment and that the section did not provide for a fine as punishment, is correct.

In the circumstances of this case, the sentence imposed by the trial Judge is not manifestly excessive.

The appeal is dismissed.

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Also found at [1988] 1 CLJ 210

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